



State of Wisconsin
1997 - 1998 LEGISLATURE

LRBs0278/1
RPN:kaf:ijs

**ASSEMBLY SUBSTITUTE AMENDMENT 1,
TO 1997 ASSEMBLY BILL 328**

October 28, 1997 – Offered by COMMITTEE ON JUDICIARY.

1 **AN ACT** *to renumber and amend* 895.052; and *to create* 895.05 (3) and 895.052
2 (1) of the statutes; **relating to:** libelous electronic material and radio or
3 television defamation.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

4 **SECTION 1.** 895.05 (3) of the statutes is created to read:

5 895.05 (3) (a) In this subsection, “electronic medium” means a computerized
6 or electronic information service, including a bulletin board, a network, an online
7 service, electronic mail, a forum or a news group.

8 (b) Before any civil action is commenced for damages related to the inclusion
9 of any libelous material in any electronic medium, the libeled person shall first give
10 the person alleged to be responsible for the libelous material a reasonable
11 opportunity to correct the libelous material. The libeled person shall request that

1 the person alleged to be responsible for the libelous material correct the material.

2 A request may be made only by doing all of the following:

3 1. Mailing or delivering a written request to the person alleged to be responsible
4 for the libelous material or placing the request at one of the locations in the electronic
5 medium known to the libeled person where the libelous material was placed.

6 2. Specifying in the request the locations in the electronic media known to the
7 libeled person where the libelous material was placed, the material in the electronic
8 medium that is claimed to be false and defamatory and a statement of what are
9 claimed to be the true facts.

10 3. Stating the sources, if any, from which the true facts may be ascertained with
11 definiteness and certainty.

12 (c) To correct the libelous material, the person alleged to be responsible for the
13 libelous material shall, within one week after receiving the request under par. (b),
14 place a correction under par. (d) in the same location in the electronic medium as the
15 libelous material was placed. The person alleged to be responsible for the libelous
16 material shall maintain the correction at that location for a period similar to the time
17 that the libelous material was at that location, to the extent that the person can
18 control the location and period of that placement.

19 (d) If the true facts are, with reasonable diligence, ascertainable with
20 definiteness and certainty, only a retraction shall constitute a correction. If the true
21 facts are not, with reasonable diligence, ascertainable with definiteness and
22 certainty, the placement of the libeled person's statement of the true facts identified
23 as the libeled person's statement at the same electronic medium location as the
24 libelous material was placed shall constitute a correction within the meaning of this
25 paragraph.

1 (e) A correction under par. (d), timely added to the proper location in the
2 electronic medium, without comment, in a position and type as prominent as the
3 alleged libel, shall constitute a defense against the recovery of any damages except
4 actual damages, as well as being competent and material in the mitigation of actual
5 damages to the extent that the correction mitigates the actual damages.

6 (f) The person who administers or provides telecommunications services,
7 information services or facilities for the electronic medium involved in the alleged
8 libel may not be held liable for the alleged libel unless the person did one of the
9 following:

10 1. Knowingly and wilfully allowed material that the person knew was false and
11 defamatory to be placed in the electronic medium.

12 2. Knowingly and wilfully allowed material to remain in the electronic medium
13 after the person became aware that the material was false and defamatory.

14 **SECTION 2.** 895.052 of the statutes is renumbered 895.052 (2) and amended to
15 read:

16 895.052 (2) The Notwithstanding sub. (1), the owner, licensee or operator of a
17 visual or sound radio broadcasting station or network of stations, and the agents or
18 employes of any such owner, licensee or operator, shall not be liable in damages for
19 any defamatory statement published or uttered in, or as a part of, a visual or sound
20 broadcast by a candidate for political office in those instances in which, under the
21 acts of congress or the rules and regulations of the federal communications
22 commission, the broadcasting station or network is prohibited from censoring the
23 script of the broadcast.

24 **SECTION 3.** 895.052 (1) of the statutes is created to read:

1 895.052 (1) (a) Before any civil action is commenced for damages related to
2 defamation in any radio or television broadcast or cable television transmission, the
3 defamed person shall first give the person alleged to be responsible for the
4 defamatory statement or material broadcast or transmitted a reasonable
5 opportunity to correct the defamatory statement or material. A request to correct the
6 defamatory statement or material may be made only by doing all of the following:

7 1. Mailing or delivering a written request to the person alleged to be responsible
8 for the defamatory broadcast or transmission.

9 2. Specifying in the request the program and the statement or material that
10 is claimed to be false and defamatory and a statement of what are claimed to be the
11 true facts.

12 3. Stating the sources, if any, from which the true facts may be ascertained with
13 definiteness and certainty.

14 (b) To correct the defamatory statement or material, the person alleged to be
15 responsible for the defamatory statement or material shall, within 4 days after
16 receiving the request under par. (a), broadcast or transmit a correction, as described
17 under par. (c). The person alleged to be responsible for the defamatory statement or
18 material shall broadcast or transmit at least 2 corrections for each alleged
19 defamatory broadcast or transmission, one of which shall be at approximately the
20 same time or times of day and of approximately the same length as the alleged
21 defamatory broadcast or transmission.

22 (c) If the true facts are, with reasonable diligence, ascertainable with
23 definiteness and certainty, only a retraction shall constitute a correction. If the true
24 facts are not, with reasonable diligence, ascertainable with definiteness and
25 certainty, the broadcast or transmission of the defamed person's statement of the

1 true facts, or as much of the statement as is not defamatory to another, scurrilous,
2 or otherwise improper for broadcast or transmission, identified as the defamed
3 person's statement, shall constitute a correction within the meaning of this
4 paragraph.

5 (d) A correction timely broadcast or transmitted as required under par. (b),
6 without comment, shall constitute a defense against the recovery of any damages
7 except actual damages, as well as being competent and material in the mitigation of
8 actual damages to the extent that the correction mitigates the actual damages.

9 **SECTION 4. Initial applicability.**

10 (1) This act first applies to material placed in electronic media or broadcast or
11 transmitted on radio or television on the effective date of this subsection.

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(END)